

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRETT CALDWELL,

CASE NO. C17-1741JLR

Plaintiff,

ORDER GRANTING SUMMARY JUDGMENT

THE BOEING COMPANY,

Defendant.

I. INTRODUCTION

Before the court is Defendant The Boeing Company’s (“Boeing”) motion for summary judgment. (MSJ (Dkt. # 47).) The court has considered the motion, the parties’ submissions filed in support of and opposition to the motion, the relevant portions of the record, and the applicable law. In addition, the court heard the argument of counsel on April 8, 2019. Being fully advised, the court GRANTS the motion.

ORDER - 1

II. BACKGROUND

A. Mr. Caldwell's Employment at Boeing

Plaintiff Brent Caldwell is a thirty-five-year-old, African-American man. (TAC (Dkt. # 32) ¶ 13.) Mr. Caldwell began working at Boeing on January 11, 2013, in composite fabrication at Boeing’s manufacturing facility in Frederickson, Washington. (1/22/19 Stinson Decl. (Dkt. # 48) ¶ 2, Ex. 1 (“Caldwell Dep.”) at 72:14-73:1;¹ Caldwell Decl. (Dkt. # 59-1) ¶ 3.) In November 2015, Mr. Caldwell left Boeing’s Frederickson facility and transferred to a Boeing facility in Everett, Washington—Boeing’s Composite Wing Center (“the CWC”). (*Id.* at 75:9-20; Bogardus Decl. (Dkt. # 49) ¶ 3; Caldwell Decl. ¶ 3.)

At the time of Mr. Caldwell’s transfer, the CWC was still under construction, and the facility did not officially open until May 2016. (Bogardus Decl. ¶ 3.) The CWC houses Boeing’s Automated Fiber Placement (“AFP”) machines used to manufacture the composite wings of Boeing’s 777X aircraft—its next commercial aircraft. (*Id.*) Mr. Caldwell worked as an AFP Operator, manufacturing aircraft components. (*Id.* ¶ 5; Caldwell Dep. at 75:21-76:1.) Dean Bogardus was Mr. Caldwell’s supervisor while Mr. Caldwell worked at the CWC. (1/22/19 Stinson Decl. ¶ 3, Ex. 2 (“Bogardus Corp. Dep.”) at 12:24-13:6; Bogardus Decl. ¶ 5; Caldwell Dep. at 75:21-76:1.)

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¹ Portions of Mr. Caldwell's deposition appear at multiple places on the docket. (See 2/15/19 Stinson Decl. (Dkt. # 62) ¶ 2, Ex. 1.) Irrespective of where Mr. Caldwell's deposition appears on the docket, the court cites to the deposition as "Caldwell Dep."

1 **B. Mr. Caldwell's Work Laptop**

2 To help him perform his job, Mr. Bogardus issued Mr. Caldwell a company laptop
3 computer soon after he arrived at the CWC. (Bogardus Decl. ¶ 4; Caldwell Decl. at
4 103:22-104:2, 104:14-22.) The laptop only worked while Mr. Caldwell was at the CWC,
5 and he only used it at work. (Caldwell Dep. at 103:22-104:11; *see also id.* at
6 105:25-106:25.) Mr. Caldwell used the laptop to document steps involved in the
7 composite manufacturing process. (Bogardus Decl. ¶ 6.) During composite builds,
8 employees were supposed to be on the production floor. (*Id.*) Employees were supposed
9 to use their remaining time for cleaning or performing online training. (*Id.*)

10 Mr. Caldwell admits that he used his computer while he was at work for “surf[ing]
11 the net” on websites like Twitter, Facebook, and Yahoo. (Caldwell Dep. at 107:18-23.)
12 He also acknowledges using his computer to read “news articles that would pop up.” (*Id.*
13 at 107:24-108:2.) He testified that he could not estimate how many times he would go
14 onto these websites while at work. (*Id.* at 108:10-15.) Mr. Bogardus was unaware that
15 Mr. Caldwell was on his laptop for personal use during the workday because every time
16 Mr. Bogardus approached Mr. Caldwell, it appeared that Mr. Caldwell was completing
17 online work-related training or other work responsibilities. (Bogardus Decl. ¶ 13;
18 Bogardus Corp. Dep. at 24:13-24.)

19 **C. Boeing's Investigation into Mr. Caldwell's Laptop Use**

20 In mid-December 2016, Boeing received an anonymous ethics complaint that Mr.
21 Caldwell was misusing company time by being on Facebook and watching YouTube
22 videos throughout the workday. (Petrey Decl. (Dkt. # 51) ¶ 3.) Boeing does not know

1 who made the complaint. (*Id.*) After further investigation, Boeing’s Corporate
2 Investigations group installed monitoring software on Mr. Caldwell’s work laptop that
3 allowed Boeing to monitor how Mr. Caldwell was using his work laptop during the
4 workday. (*Id.* ¶¶ 4-5.) Mr. Caldwell did not know that Corporate Investigations had
5 installed monitoring software on his laptop. (*Id.* ¶ 5.) Boeing monitored Mr. Caldwell’s
6 laptop usage on five working days between December 22, 2016, and January 6, 2017.
7 (*Id.* ¶ 6.) During this period, Mr. Caldwell spent 17.1 hours of the 40 hours he entered
8 into Boeing’s timekeeping system, or 43 percent of his workday, on non-work-related,
9 personal use of the Internet—specifically, by accessing Facebook, Yahoo, Twitter,
10 Instagram, and YouTube. (*Id.* ¶¶ 7-8.)

11 As a part of the investigation, a Boeing investigator interviewed both Mr. Caldwell
12 and Mr. Bogardus. (*Id.* ¶ 9.) In a January 31, 2017, voluntarily signed statement, Mr.
13 Caldwell admitted that he “check[ed] social media throughout the day” but did “not keep
14 track of the amount of time [he was] on the Internet for personal use.” (Petrey Decl. ¶ 13,
15 Ex. A (“Caldwell Statement”) at 1; Caldwell Dep. at 122:20-123:2 (acknowledging that
16 the signature on the statement is his).) Mr. Caldwell acknowledged that he visited “social
17 media sites such as Twitter and Facebook,” and that he does “not typically use the
18 Internet for work related matters.” (Caldwell Statement at 1.) The Boeing investigator
19 explained to Mr. Caldwell that over the period of December 22, 2016, through January 6,
20 2017, he had “averaged over approximately 3 1/2 hours of personal Internet during the
21 days [he] worked.” (*Id.*) In his statement, Mr. Caldwell acknowledged that he may have
22 “spent that amount of time on the Internet for personal use,” but explained that “[i]t may

1 have been slow at work during that time period.” (*Id.*) He further explained that there
2 are “down times” in his work area, and if he does not have work to do, it is common for
3 him to be on the Internet for personal use. (*Id.*) He also stated that, although he does not
4 keep track of his personal Internet time while he is at work, “spending 3 1/2 hours a day
5 would not be typical” for him. (*Id.*) Nevertheless, he did not “have an idea about the
6 amount of time” he actually spent on personal Internet time while at work. (*Id.*) During
7 his deposition, Mr. Caldwell again admitted that he used his work computer during work
8 time to surf the Internet for personal entertainment. (Caldwell Dep. at 107:18-108:2.)

9 **D. Mr. Caldwell’s ECARB & Termination**

10 Consistent with Boeing’s policy, Mr. Caldwell’s documented and admitted
11 personal use of the Internet was submitted to a Boeing Employee Corrective Action
12 Review Board (“ECARB”) for review, evaluation, and disposition. (Lewis Decl. (Dkt.
13 # 52) ¶¶ 13, 16; Petrey Decl. ¶ 17.) ECARB is a committee of Boeing employees that is
14 responsible for the review, evaluation, and disposition of serious employee misconduct.
15 (Lewis Decl. ¶ 14.) Boeing uses ECARB as a formal process to review more significant
16 cases of misconduct so that corrective action is applied consistently. (*Id.*) All
17 time-misuse cases are reviewed by an ECARB. (Miller Decl. (Dkt. # 53) ¶ 3.)

18 Mr. Caldwell’s ECARB was on February 8, 2017. (*Id.*) The ECARB that
19 reviewed Mr. Caldwell’s case was composed of the following members: (1) Steven
20 Miller, as chair, (2) a standing member from Ethics, (3) four Employee Corrective Action
21 (“ECA”) standing members, (4) Mr. Bogardus, as Mr. Caldwell’s manager, and (5)
22 Michael Edmiston, as the relevant Human Resources (“HR”) representative. (Lewis

1 Decl. ¶ 18, Miller Decl. ¶ 3, Borgardus Corp. Dep. 22:24-23:3; Borgardus Decl. ¶ 15.)
2 Except for Mr. Bogardus and Mr. Edmiston, none of the ECARB members had ever met
3 Mr. Caldwell or knew his race. (Borgardus Decl. ¶ 15 (“The ECARB was conducted by
4 telephone conference, and other than [Mr.] Edmiston, no one on the ECARB had ever
5 met [Mr.] Caldwell or were [sic] told his race.”); 1/22/19 Edmiston Decl. (Dkt. # 54) ¶ 7
6 (“Other than myself and [Mr.] Bogardus, no one on the ECARB ever met [Mr.] Caldwell
7 or was told his race.”); *see also* 2/15/19 Edmiston Decl. (Dkt. # 63) ¶ 3 (“No member of
8 the ECARB who voted to discharge [Mr.] Caldwell would have had reason to know [Mr.]
9 Caldwell’s race.”); *see* Miller Decl. ¶ 3 (“ECARB members are not provided the race of
10 employees, only names.”).)

11 During the ECARB, Mr. Bogardus advocated for retaining Mr. Caldwell and
12 would have disciplined him with time off from work instead of discharge. (Borgardus
13 Corp. Decl. at 23:12-15; Borgardus Decl. ¶ 16.) Mr. Edmiston also voted to discipline
14 Mr. Caldwell with time off work rather than discharge. (2/15/19 Edmiston Decl. (Dkt.
15 # 63) ¶ 2.) However, ultimately, a majority of ECARB members voted to terminate Mr.
16 Caldwell’s employment with Boeing. (Miller Decl. ¶ 5; Lewis Decl. ¶ 22; Bogardus
17 Decl. ¶ 17.) No member of the ECARB who voted to discharge Mr. Caldwell had any
18 reason to know Mr. Caldwell’s race. (2/15/19 Edmiston Decl. ¶ 3.) Indeed, Mr.
19 Caldwell’s “race was not disclosed to ECARB members, and there was no discussion
20 whatsoever of his race during the ECARB.” (*Id.*) On February 10, 2017, Mr. Bogardus
21 informed Mr. Caldwell of the decision to terminate his employment for misuse of
22 company time. (Bogardus Decl. ¶ 18; Caldwell Dep. at 81:20-82:20.)

1 Boeing has discharged more than 200 employees for similar time-misuse offenses.
2 (Lewis Decl. ¶¶ 11-12, Ex. 4.) Of those individuals, at least 137 are Caucasian and 16
3 are African-American. (*See id.*) Nearly two-thirds of the Caucasian offenders spent less
4 work time than Mr. Caldwell misusing the Internet. (*See id.* (showing 89 of the 137
5 terminations of white employees for under 43 percent of time misuse).) Mr. Caldwell has
6 no evidence to counter the foregoing statistics from Boeing. (*See* Caldwell Dep. at 124:3-
7 17 (“Q: Do you have any information about the races of people who have been
8 terminated for personal computer use time? A: I don’t know anyone.”).)

9 Mr. Caldwell admits that his personal Internet use during Boeing’s investigation
10 fell within Boeing’s definition of misuse of company time. (*See id.* at 132:7-133:6.) Mr.
11 Caldwell agrees that Boeing followed ECARB procedures in arriving at its decision to
12 terminate his employment. (*See id.* at 137:3-138:1.)

13 **E. Mr. Caldwell’s Lawsuit**

14 On August 17, 2017, Mr. Caldwell filed a charge of discrimination with the Equal
15 Employment Opportunity Commission (“EEOC”). (TAC ¶ 25, Ex. 1.) He received a
16 Notice of Right to Sue on August 23, 2017. (*See id.*) On November 11, 2017, Mr.
17 Caldwell filed suit against Boeing. (*See* Compl. (Dkt. # 1).) In his third amended and
18 operative complaint, Mr. Caldwell asserts two claims against Boeing for racial
19 discrimination under Title VII of the Civil Rights Act of 1964: (1) disparate treatment
20 arising from his termination, and (2) a racially hostile work environment. (*See generally*
21 TAC); *see also* 42 U.S.C. § 2000e-2, *et seq.*

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1 1. Mr. Caldwell's Claim for Disparate Treatment

2 Mr. Caldwell contends that his termination from Boeing was racially motivated
3 because of a run-in with an anonymous white male who was making fun of Mr. Caldwell
4 due to his race around the time Mr. Caldwell was investigated for excessive personal
5 usage of his work laptop. (Caldwell Dep. at 87:8-13.) Mr. Caldwell also speculates that
6 one of his leads, Tom Hammond, whom Mr. Caldwell accuses of discriminatory
7 behavior, *see infra* § III.E.2.d, may have made the anonymous call reporting Mr.
8 Caldwell's personal use of the Internet. (*Id.* at 111:4-112:21.) However, any connection
9 between the hotline tip and Mr. Caldwell's race is based solely on Mr. Caldwell's
10 assumptions because he admits that he has no specific information about who made the
11 anonymous call, but rather only his personal speculations. (*See id.*) Mr. Caldwell also
12 believes Boeing's stated reason for his termination—excessive personal use of the
13 Internet during work hours—is pretextual. (*Id.* ¶ 22.) He states that “[t]here was never
14 any policy at Boeing, Everett that prevented the employees from using the Internet
15 [during] down time.”² (*Id.*) He asserts that other employees with whom he worked and

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18 ² Mr. Caldwell states that the depositions of his co-workers supports this point. (Caldwell
19 Decl. ¶ 22.) Logan Schimon, a co-worker of Mr. Caldwell at both the Frederickson facility and
20 the CWC in Everett testified that, although they never had a rule at the CWC that they could not
21 use their computer for personal use during downtime, he assumed that his computer “was for
22 company use only.” (Schimon Dep. (Dkt. # 59-3) at 26:14-25.) He also testified that, rarely but
“[f]rom to time,” he uses his computer for personal use during work downtimes, and he believes
“everyone at Boeing does it.” (*Id.* at 27:1-24.) Derrick Yam, a co-worker of Mr. Caldwell,
testified that there was no policy at the CWC in Everett that prevented operators from using the
Internet during their downtime and most did do so. (Yam Dep. (Dkt. # 59-5) at 17:20-18:4,
27:22-28:12, 37:19-38:1.)

1 who were not African-American “were never disciplined for this ‘offense,’ and
2 [everyone] used the Internet during down time.” (*Id.*)

3 2. Mr. Caldwell’s Claim for Hostile Work Environment

4 In support of his claim for a racially hostile work environment, Mr. Caldwell
5 describes a number of events that occurred during his employment with Boeing.
6 Although Mr. Caldwell describes several events while he worked at Boeing’s
7 Frederickson facility, for reasons stated in the analysis section below, the court describes
8 only those events which occurred after Mr. Caldwell transferred to the CWC in Everett,
9 Washington. *See infra* § III.C.1. In general, Mr. Caldwell testifies that he experienced
10 “racial harassment . . . on an ongoing, continuous, and daily basis” after he moved to the
11 CWC (Caldwell Decl. ¶ 11), but he provides specific detail concerning a series of
12 disparate and largely unrelated events spanning approximately 15 months (*see generally*
13 *id.*).

14 a. *Waving at a Caucasian Female Employee*

15 Mr. Caldwell testifies that, in November 2015, he waved at a Caucasian female
16 Boeing employee with whom he worked. (*Id.* ¶ 13.) She did not wave back and looked
17 down at her feet. (*Id.*) Shortly thereafter, Mr. Caldwell was asked by two Caucasian
18 security guards to “step outside.” (*Id.*) Mr. Caldwell attributes his treatment by the
19 security guards to his interaction with the Caucasian female Boeing employee. (*See id.*
20 (“I have no doubt that if a Caucasian waved to [the Caucasian female employee] then I
21 would not have been dragged out of the locker room by Boeing security.”).)

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1 *b. Caucasian Employee Imitates an Ape*

2 Mr. Caldwell testifies that “one of the worst incidents” of racial harassment
3 occurred on December 1, 2016, and involved Caucasian employees at the Tooling
4 Department. (*Id.* ¶ 14.) As Mr. Caldwell was moving large pieces of metal, a Caucasian
5 Boeing employee began “walking as a knuckle-dragging ape and making ape noises,”
6 and stated, “I can’t stand you blacks,” while other Caucasian employees laughed. (*Id.*)
7 Mr. Caldwell attests that he reported the incident to Mr. Bogardus, who later accused Mr.
8 Caldwell of trying to provoke a fight in the parking lot and, on that basis, threatened to
9 discipline Mr. Caldwell. (*Id.*)

10 *c. Teasing due to Blue Footwear*

11 Mr. Caldwell testifies that, from April 2016, through his termination, he was
12 “singled out and harassed on almost a daily basis” due to his footwear. (*Id.* ¶ 18.) Mr.
13 Caldwell wore a set of royal blue Timberland steel-toed boots. (*Id.*) Because the toes
14 were reinforced with steel, they met Boeing’s regulation, but Mr. Caldwell attests that
15 “Caucasian employees and manager constantly questioned [him] about and even made
16 fun of [his] boots.” (*Id.*) Although Mr. Caldwell does not state that anyone engaging in
17 this behavior referenced his race, he nevertheless impliedly attributes this treatment to
18 racial discrimination. (*See id.* (‘[T]he concept of an African American wearing blue
19 boots was just too much for many of the Boeing Caucasians to take.”).)

20 *d. Supervisor Raised to be Afraid of African-Americans*

21 Mr. Caldwell states that one his leads, Mr. Hammond, would follow him around
22 closely and “boss [him] around.” (*Id.* ¶ 19.) Mr. Caldwell testifies that, in October 2016,

1 and on other occasions, Mr. Hammond told Mr. Caldwell that he was afraid of Mr.
2 Caldwell because that is how Mr. Hammond was raised. (*Id.*) Mr. Hammond denies that
3 he made this remark. (Hammond Dep. (Dkt. # 59-6) at 17:15-18:9.)

4 e. *Display of the Confederate Flag*

5 Mr. Caldwell states in his declaration that, in October 2016, a Caucasian Boeing
6 employee “wore Confederate flag memorabilia to work.” (*Id.* ¶ 4(d).) Mr. Caldwell
7 acknowledges that, after he complained to Boeing management, the individual moved the
8 Confederate flag. (*Id.*) Nevertheless, Mr. Caldwell attests that the flag, although now
9 rolled up, was still visible. (*Id.*) Although Mr. Caldwell stated in his declaration that this
10 incident occurred while he worked at the CWC in Everett, Washington (*see id.*), during
11 his deposition, Mr. Caldwell testified that all of the incidents involving Confederate flags
12 occurred while he was working at Boeing’s Frederickson facility (*see* Caldwell Dep. at
13 192:25-193:3).

14 f. *Complaints about R&B Music*

15 Mr. Caldwell testifies that he played “R&B music,” by artists like Diana Ross and
16 Aretha Franklin, while he worked at the CWC in Everett. (Caldwell Decl. ¶ 7.) He
17 testifies that he was “accused by Caucasian employees and managers of playing
18 ‘aggressive’ music.” (*Id.*) Although Mr. Caldwell does not state that any employee
19 referenced his race when criticizing his music, he impliedly attributes the criticism to
20 racial discrimination. (*See id.* (“I strongly believe any music I played as one of the only
21 African American males at Everett would have been criticized by Caucasian
22 management.”).)

1 g. *Supervisor's Derogatory Statements about African-Americans*

2 Mr. Caldwell testifies that Mr. Bogardus "often would say derogatory things about
3 African Americans." (*Id.* ¶ 21.) The only example Mr. Caldwell provides, however, is
4 an incident in which Mr. Caldwell attests that Mr. Bogardus told Mr. Caldwell that
5 "blacks" in the South have a "meth problem and they can't help it." (*Id.*)

6 h. *Requests to Transfer to Second Shift*

7 Mr. Caldwell attests that, several times from June 2016 to his termination, Mr.
8 Bogardus asked another manager to try to talk Mr. Caldwell into transferring to the
9 second shift. (*Id.* ¶ 20.) Mr. Caldwell does not testify that either Mr. Bogardus or the
10 other manager linked this request to Mr. Caldwell's race in any way; nevertheless, Mr.
11 Caldwell believes that Mr. Bogardus "did this to get rid of his 'black problem,'" and,
12 once Mr. Caldwell made it clear that he would not voluntarily transfer to another shift,
13 "Boeing management decided to run [him] out of Everett." (*Id.*)

14 i. *Harassment by Security Guards*

15 In his declaration, Mr. Caldwell attests that, at both the Fredrickson and CWC
16 facilities, multiple Boeing security guards would single him out and consistently ask him
17 to show his Boeing badge. (*Id.* ¶ 16.) Yet, in his earlier deposition and in his Third
18 Amended Complaint, Mr. Caldwell relates only one incident in 2013 involving one
19 security guard at the Frederickson facility. (Caldwell Dep. at 194:5-195:6, 212:5-18;
20 TAC ¶ 15.)

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j. *Exclusion for Water Cooler*

Mr. Caldwell testifies that, in early 2017, a Caucasian woman prevented him from drinking from a water cooler. (Caldwell Decl. ¶ 11.) Mr. Caldwell attests that the woman screamed at him that the water cooler was not for him. (*Id.*) He does not testify that the woman referred in any way to his race, but in his declaration he implies that she excluded him on that basis. (*See id.* (“Segregated water coolers?”).) In his deposition, however, Mr. Caldwell acknowledges that he does not have any evidence that the woman’s actions were based on his race. (Caldwell Dep. at 239:25-240:3 (“Q: Do you have any evidence that the actions of the older caucasian [sic] woman were based on your race? A: I do not. . . .”).) Mr. Caldwell states that he reported the incident to his manager, Mr. Bogardus, but Mr. Bogardus did nothing in response. (Caldwell Decl. ¶ 11.) Boeing managers told other employees, including Caucasian and Asian-American employees, that they could not use the water cooler in question unless they worked for the 787 group because the water cooler in question was paid for from the 787 budget. (*See, e.g.*, Koahou Decl. (Dkt. # 55) ¶¶ 3-9; McNally Decl. (Dkt # 56) ¶¶ 3-9.) Mr. Caldwell was not part of the 787 group. (*See* McNally Decl. ¶ 8.)

k. Basketball-Related Incidents

Mr. Caldwell states that there were a series of basketball-related incidents at a Boeing basketball court involving Ron Anderson, who is a Caucasian Boeing employee. (Caldwell Decl. ¶¶ 12(a)-(c).) First, Mr. Caldwell attests that, in December 2015, Mr. Anderson falsely accused him of stealing basketballs, which Mr. Caldwell owned. (*Id.* ¶ 12(a).) Mr. Caldwell testifies that Mr. Anderson then stated that there was a rule that

1 Boeing employees could not bring their own basketballs, despite the fact that no such rule
2 was posted. (*Id.*) Mr. Caldwell states that a few weeks later the sign at the court was
3 changed to add this rule. (*Id.*)

4 Second, Mr. Caldwell testifies that, on February 13, 2016, Mr. Anderson told him
5 that dunking the basketball was not allowed despite the absence of any such rule on the
6 posted sign. (*Id.* ¶ 12(b).) Mr. Caldwell states that after he pointed out this fact, the sign
7 was changed to add a “no dunking” rule. (*Id.*)

8 Third, Mr. Caldwell states that, on February 19, 2016, he said a curse word, and
9 Mr. Anderson admonished him not to swear despite the fact that Caucasian players were
10 also swearing without admonishment. (*Id.* ¶ 12(c).) Mr. Caldwell attests that he
11 apologized for saying the curse word and went back to playing, but Mr. Anderson stated
12 that he did not like Mr. Caldwell’s attitude, began screaming at Mr. Caldwell, and
13 ordered Mr. Caldwell to leave the gym. (*Id.*) Mr. Caldwell states that Mr. Anderson
14 blocked his exit from the gym and then called Boeing security. (*Id.*) Mr. Caldwell attests
15 that Boeing security would not listen to his side of the story and demanded to see his
16 Boeing identification. (*Id.*) Mr. Caldwell testifies that he reported the incident to his
17 supervisor, Mr. Bogardus, and—instead of taking Mr. Caldwell’s side—Mr. Bogardus
18 disciplined Mr. Caldwell. (*Id.*)

19 **F. Boeing’s Motion for Summary Judgment**

20 On January 22, 2019, following the close of discovery, Boeing timely filed a
21 motion for summary judgment regarding Mr. Caldwell’s claims for (1) employment
22 discrimination in his termination, and (2) a hostile work environment. (*See* MSJ; *see*

1 Sched. Order (Dkt. # 21) at 1 (setting the discovery cutoff on December 24, 2018 and the
2 dispositive motions deadline on January 22, 2019).) Mr. Caldwell opposed Boeing's
3 motion. (See Resp. (Dkt. # 59).) The court now considers Boeing's motion.

4 **III. ANALYSIS**

5 **A. Summary Judgment Standard**

6 Summary judgment is appropriate if the evidence, when viewed in the light most
7 favorable to the non-moving party, demonstrates "that there is no genuine dispute as to
8 any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ.
9 P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. Cty. of L.A.*,
10 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the initial burden of showing
11 there is no genuine issue of material fact and that he or she is entitled to prevail as a
12 matter of law. *Celotex*, 477 U.S. at 323. If the moving party meets his or her burden,
13 then the non-moving party "must make a showing sufficient to establish a genuine
14 dispute of material fact regarding the existence of the essential elements of his case that
15 he must prove at trial" in order to withstand summary judgment. *Galen*, 477 F.3d at 658.
16 The court is "required to view the facts and draw reasonable inferences in the light most
17 favorable to the [non-moving] party." *Scott v. Harris*, 550 U.S. 372, 378 (2007).

18 **B. Mr. Caldwell's Disparate Treatment Claim**

19 Under the *McDonnell Douglas* burden-shifting analysis,³ Mr. Caldwell bears the
20 burden of first establishing a prima facie case of employment discrimination by offering

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22 ³ *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

1 evidence to satisfy the following elements: (1) he is a member of a protected class; (2) he
2 was qualified for his position and performing satisfactorily; (3) he experienced an adverse
3 employment action; and (4) similarly-situated individuals outside the claimed protected
4 class were treated more favorably, or other circumstances give rise to an inference of
5 discrimination. *Hawn v. Exec. Jet Mgmt., Inc.*, 615 F.3d 1151, 1155-56 (9th Cir. 2010).

6 If Mr. Caldwell can establish a *prima facie* case, the burden of production, but not
7 persuasion, shifts back to Boeing to articulate a legitimate, nondiscriminatory reason for
8 its challenged actions. *See id.* at 1155 (citing *Chuang v. Univ. of Cal. Davis, Bd. of Trs.*,
9 225 F.3d 1115, 1123-24 (9th Cir. 2000)). If Boeing meets this burden, Mr. Caldwell
10 must raise a triable issue of material fact as to whether Boeing’s proffered reasons for Mr.
11 Caldwell’s termination are mere pretext for unlawful discrimination. *See id.* at 1155-56
12 (citing *Noyes v. Kelly Servs.*, 488 F.3d 1163, 1168 (9th Cir. 2007)). The difference
13 between the first and third steps of the framework “is not without some consequence.”

14 *Id.* at 1158. Specifically, Mr. Caldwell’s “burden is much less at the *prima facie* stage
15 than at the pretext stage.” *See id.*; *see also Stecki v. Motorola, Inc.* 703 F.3d 392, 393
16 (9th Cir. 1983) (requiring “specific, substantial evidence of pretext” to defeat the
17 employer’s motion for summary judgment); *Wheeler v. Aventis Pharm.*, 360 F.3d 853,
18 857 (8th Cir. 2004) (describing the pretext stage as “rigorous,” but the *prima facie* stage
19 as “not onerous”). Despite the burden shifting, the ultimate burden of proof remains on
20 Mr. Caldwell to show that Boeing intentionally discriminated against him because of his
21 race. *See Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1281 (9th Cir. 2000).

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1 1. Mr. Caldwell Fails to Establish the Fourth Element of His Prima Facie Case of
2 Disparate Treatment

3 The court concludes that Mr. Caldwell cannot establish the fourth element of his
4 prima facie claim—that similarly-situated individuals outside the claimed protected class
5 were treated more favorably, or other circumstances give rise to an inference of
6 discrimination. *See Hawn*, 615 F.3d at 1155. Mr. Caldwell must not only show that
7 Boeing treated employees outside his protected class more favorably, but he must also
8 bring forward evidence that these employees are similar in all material respects. *Morgan*
9 *v. Selig*, 447 F.3d 748, 755 (9th Cir. 2006). As discussed below, he fails to do so.

10 Since 2012, Boeing has discharged more than 200 employees—of different
11 races—after investigations substantiated that those employees committed the same or a
12 similar time-misuse violation as Mr. Caldwell. (See Lewis Decl. ¶ 11.) Boeing
13 terminated the majority of these employees for misuse of company time by using a
14 computer for non-work related reasons. (*Id.*) Of these individuals, at least 137 are
15 Caucasian and 16 are African-American. (See *id.* ¶ 12, Ex. 4.) Two-thirds of the
16 Caucasian offenders spent less time than Mr. Caldwell misusing the Internet. (See *id.*)
17 Thus, Boeing discharged more than eight times as many Caucasian employees as
18 African-American employees, and at least 89 Caucasians employees who had less
19 egregious percentages of misused time than Mr. Caldwell. Mr. Caldwell has not
20 presented contrary evidence. (See Caldwell Dep. at 124:3-8 (stating that he “had no clue”
21 that Boeing terminated others for excessive Internet use or the races of those individuals).
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1 Yet, Mr. Caldwell contends that he can show that similarly situated individuals
2 outside of his protected class were treated more favorably because his immediate
3 co-workers were not similarly disciplined for using the Internet on their phones or
4 available work computers for personal use during work hours. (Resp. at 17-18.) These
5 facts, even if true, do not change the court’s analysis. First, the fact that Mr. Caldwell’s
6 immediate co-workers were not disciplined for similar conduct does not alter the fact that
7 Boeing has terminated large numbers of non-African-American employees for similar or
8 nearly identical offenses. (See Lewis Decl. ¶¶ 11-12, Ex. 4.) Thus, even if Boeing
9 inadvertently failed to discipline certain co-workers of Mr. Caldwell, this failure would
10 not demonstrate that Mr. Caldwell was treated differently because of his race.

11 More important, Mr. Caldwell’s argument ignores that his co-workers were not
12 similarly situated to him “in all material respects” because Boeing was unaware of Mr.
13 Caldwell’s co-workers’ alleged misuse of the Internet. Unlike with Mr. Caldwell—
14 where Boeing received an anonymous ethics complaint about his Internet usage (Petrey
15 Decl. ¶ 3)—there is no evidence that Boeing had knowledge of Mr. Caldwell’s
16 coworkers’ alleged time or Internet misusage. This lack of evidence is fatal to Mr.
17 Caldwell’s argument. *See, e.g., Chavez v. Casas Christian Preschool*, No.
18 CV-11-177-TUC-FRZ, 2012 WL 2091641, at *6 (D. Ariz. May 9, 2012), *report and*
19 *recommendation adopted*, No. CV 11-177-TUC-FRZ, 2012 WL 2092153 (D. Ariz. June
20 11, 2012) (concluding that the plaintiff’s comparator “was not a similarly situated
21 employee because her alleged misconduct was not brought to the attention of the
22 supervisors”); *Jagessar v. Walgreen Co.*, No. 13-21575-CIV, 2014 WL 1092370, at *10

1 (S.D. Fla. Mar. 19, 2014) (entering summary judgment where the plaintiff failed to offer
2 evidence that her “comparators were accused of or investigated for the same conduct” by
3 the employer); *Jackson v. Blockbuster, Inc.*, No. CIV.A.4:09-CV-119, 2010 WL
4 2268086, at *5 (E.D. Tex. June 4, 2010) (finding no prima facie case where the plaintiff
5 failed to submit evidence that anyone ever reported the misconduct of the plaintiff’s
6 alleged comparators to the employer). Thus, the court concludes that Mr. Caldwell fails
7 to show that Boeing treated similarly situated employees outside of Mr. Caldwell’s
8 protected class more favorably.

9 Mr. Caldwell also attempts to paint an inference of racial discrimination in his
10 termination by referencing the entire universe of his allegations against Boeing. (Resp. at
11 16-17.) This approach also fails to change the court’s analysis because Mr. Caldwell
12 offers no evidence connecting these other allegations to his termination. None of Mr.
13 Caldwell’s various allegations of racial discrimination involve individuals who voted to
14 terminate his employment during the ECARB process.⁴ Mr. Caldwell cannot use the
15 alleged remarks or actions of non-decision-makers to establish an inference of
16 discrimination, as courts routinely hold that there must be a connection between any
17 alleged remark and the adverse employment decision. *Habib v. Tote Servs.*, No.
18 C14-1685RSL, 2017 WL 108553, at *7 (W.D. Wash. Jan. 11, 2017), *aff’d sub nom.*
19 *Habib v. TOTE Servs., Inc.*, 699 F. App’x 759 (9th Cir. 2017) (granting summary

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⁴ Although Mr. Caldwell alleges that Mr. Bogardus was involved in some of his
22 allegations of discriminatory conduct, *see supra* §§ II.E.2.g, h, j, Mr. Bogardus did not vote to
terminate Mr. Caldwell’s employment during the ECARB process (Bogardus Corp. Dep. at
23:12-15; Bogardus Decl. ¶ 16).

1 judgment as to the plaintiff’s discriminatory termination claim where the plaintiff failed
2 to offer “any evidence of bigotry” by the relevant decision-maker and was unable to rely
3 on the “racist and Islamophobic views” of select coworkers, which the court found did
4 not motivate the plaintiff’s termination); *see also DeHorney v. Bank of Am. Nat’l Trust &*
5 *Sav. Ass’n*, 879 F.2d 459, 467-68 (9th Cir. 1989) (affirming the grant of summary
6 judgment in favor of the employer because the plaintiff failed to demonstrate a nexus
7 between a subordinate’s racially discriminatory remark and the superior’s decision to
8 terminate the plaintiff); *Orum v. Chertoff*, No. C05-00795 MJJ, 2007 WL 4593497, at *6
9 (N.D. Cal. Dec. 28, 2007) (“If remarks are offered as evidence of discriminatory intent,
10 they must either be those made by the decision-maker herself or Plaintiff must show a
11 sufficient nexus between the remarks and the decision-makers’ subsequent employment
12 decisions.”).

13 Thus, the court concludes that Mr. Caldwell has failed to meet his burden of
14 establishing the fourth element of his prima facie disparate treatment claim.⁵
15 Accordingly, Boeing is entitled to summary judgment on Mr. Caldwell’s claim for
16 racially-motivated disparate treatment in his termination.

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21 ⁵ Boeing also maintains that Mr. Caldwell cannot meet his burden concerning the second
22 element of his prima facie disparate treatment claim—that he was qualified for his position and
performing satisfactorily. (MSJ at 13-14.) Because the court determines that Mr. Caldwell
failed to meet his burden with respect to the fourth element, the court need not consider this
argument.

1 2. Mr. Caldwell Cannot Show that Boeing's Rationale Was Pretextual

2 Even if Mr. Caldwell could establish a *prima facie* case for discrimination in his
3 termination, his claim would still fail because he cannot show with “specific evidence,”
4 *Coleman*, 232 F.3d at 1282, that Boeing’s stated legitimate, nondiscriminatory reason for
5 his termination was merely a pretext for intentional discrimination. *See Hawn*, 615 F.3d
6 at 1155-56.

7 Mr. Caldwell does not dispute that he spent time surfing the Internet during work
8 hours, and that a company investigation concluded that his Internet usage comprised 43
9 percent of his total work time. (*See* Petrey Decl. ¶¶ 7-8.) Further, Mr. Caldwell admits
10 that he does “not typically use the Internet for work related matters.” (Caldwell
11 Statement at 1.) Courts have found this type of misconduct—excessive, personal use of
12 the Internet—is sufficient to establish a legitimate, non-discriminatory, and
13 non-pretextual basis for termination. *See, e.g., Twymon v. Wells Fargo & Co.*, 462 F.3d
14 925, 932-35 (8th Cir. 2006) (finding the termination nondiscriminatory where it was
15 “based upon [the plaintiff’s] excessive and inappropriate use of the Internet”); *Sawa v.*
16 *RDG-GCS Joint Ventures III*, No. CV 15-6585, 2017 WL 3033996, at *20 (E.D. Pa. July
17 14, 2017) (“[C]ourts frequently hold that an employee’s improper use of an employer’s
18 computer is a legitimate basis for termination.”) (citing cases); *Delgado v. Combs*, No. A-
19 09-CA-571-SS, 2010 WL 3909398, at *5 (W.D. Tex. Sept. 28, 2010) (granting summary
20 judgment based on “excessive internet use”).

21 Further, the question of pretext is not whether Boeing’s business justification is
22 “objectively false,” but whether Boeing “honestly believed its reasons for its actions,”

1 even if others might think the reason was “foolish or trivial or even baseless.” *Villiarimo*
2 *v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1063 (9th Cir. 2002) (quoting *Johnson v.*
3 *Nordstrom, Inc.*, 260 F.3d 727, 733 (7th Cir. 2001)). Mr. Caldwell presents no evidence
4 to undermine Boeing’s legitimate business decision to terminate his employment in
5 accordance with company policy and after its investigation and application of the
6 ECARB disciplinary process. Mr. Caldwell admits he has no knowledge of who made
7 the anonymous ethics hotline complaint about his computer usage except for guesses
8 (Caldwell Dep. at 111:4-112:21, 115:2-15), nor any knowledge of the investigation into
9 his computer usage or ECARB disciplinary process other than suppositions and
10 conjecture (*id.* at 115:16-116:16, 139:2-25, 146:17-21). He also admits that Boeing
11 followed proper ECARB procedures in his dismissal. (*Id.* at 137:23-138:1.)

12 Mr. Caldwell “guesse[s]” that either his team lead, Mr. Hammond, or someone
13 from the tooling department reported his excessive computer usage. (*Id.* at 112:4-11,
14 87:8-24.) He suggests that one of these individuals may have reported his computer
15 usage due to racial animus, but his assertion—based on nothing more than speculation—
16 is insufficient to withstand summary judgment. *See, e.g., Collings v. Longview Fibre*
17 *Co.*, 63 F.3d 828, 834 (9th Cir. 1995) (holding that the plaintiff’s “conclusory assertions
18 that [the defendant] must have had a discriminatory intent . . . are insufficient to avoid
19 summary judgment” in handicap discrimination case); *Kohler v. Ericsson, Inc.*, 847 F.2d
20 499, 501 (9th Cir. 1988) (holding that the plaintiff’s assertion “based ‘solely on
21 conjecture and speculation’” that the plaintiff’s supervisor “wanted to contrive a reason
22 for her discharge” did not defeat summary judgment); *Carroll v. Univ. of Wash.*, No.

1 C08-1498Z, 2010 WL 11561612, at *5 (W.D. Wash. Sept. 27, 2010) (holding that the
2 plaintiff’s “subjective belief that the department treated him less favorably than other
3 employees as a result of his association with African-Americans” was insufficient to
4 withstand summary judgment). In any event, indisputably, neither of these individuals
5 had any involvement in Boeing’s decision to terminate Mr. Caldwell. (See Bogardus
6 Decl. ¶ 15; *see also* Lewis Decl. ¶ 18.) Accordingly, even if their actions arose out of a
7 discriminatory intent, that action cannot be imputed to Boeing because Boeing opened an
8 independent investigation and ECARB process that led to Mr. Caldwell’s termination.

9 *See Poland v. Chertoff*, 494 F.3d 1174, 1183 (9th Cir. 2007) (“[I]f an adverse
10 employment action is the consequence of an entirely independent investigation by an
11 employer, the animus of the retaliating employee is not imputed to the employer.”)
12 (citing *Willis v. Marion Cty. Auditor’s Office*, 118 F.3d 542, 547 (7th Cir. 1997)
13 (“[W]hen the causal relationship between the subordinate’s illicit motive and the
14 employer’s ultimate decision is broken, and the ultimate decision is clearly made on an
15 independent and a legally permissive basis, the bias of the subordinate is not relevant.”)).

16 Moreover, Mr. Caldwell presents no evidence to counter Boeing’s evidence that
17 the ECARB members who voted for his termination had never met him and did not know
18 his race.⁶ (See Bogardus Decl. ¶ 15; 1/22/19 Edmiston Decl. ¶ 7; 2/15/19 Edmiston
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21 ⁶ At oral argument, counsel for Mr. Caldwell argued that if Boeing wanted to prove that
22 the ECARB members who voted for Mr. Caldwell’s termination did not know his race, Boeing
should have submitted declarations from each of those individuals to verify that fact. Boeing
submitted declarations from three members of the ECARB, all of whom testified that none of the
ECARB members who voted for Mr. Caldwell’s termination knew his race. (See Borgardus
Decl. ¶ 15; 1/22/19 Edmiston Decl. ¶ 7; 2/15/19 Edmiston Decl. ¶ 3; *see also* Miller Decl. ¶ 3.)

1 Decl. ¶¶ 1-3; *see also* Miller Decl. ¶ 3 (“ECARB members are not provided the race of
2 employees, only names.”).) This undisputed fact prevents a finding of pretext concerning
3 Boeing’s decision to terminate Mr. Caldwell. *See, e.g., Robinson v. Adams*, 847 F.2d
4 1315, 1316-17 (9th Cir. 1987) (finding no intentional discrimination in hiring where the
5 decision-makers were unaware of the plaintiff’s race, and the plaintiff offered no
6 evidence to call their credibility into question); *Kwesele v. King Cty.*, No. 2:17-CV-1426-
7 RAJ, 2019 WL 266450, at *9 (W.D. Wash. Jan. 18, 2019) (finding that the plaintiff failed
8 to establish pretext because he was unable to show how the adverse employment decision
9 was “motivated by racial animus from the relevant decision-makers”); *Nguyen v.*
10 *Walgreen Corp.*, No. EDCV 08-1931-JTM-FMO, 2010 WL 11595838, at *6 (C.D. Cal.
11 May 17, 2010) (granting summary judgment “[s]ince [the plaintiff] has not shown the
12 existence of any discriminatory animus by these decision makers”).

13 Nevertheless, Mr. Caldwell argues that Boeing’s reason for terminating him must
14 be pretext because neither he nor his immediate colleagues at the CWC knew that
15 personal use of the Internet during inactive periods was not permitted, they all engaged in
16 this behavior, and yet, he was the only one of the group terminated for that reason. (*See*
17 Resp. at 17-18; *see also* Caldwell Decl. ¶ 22.) Although Mr. Caldwell may believe that
18 “[t]here was never any policy at Boeing . . . that prevented the employees from using the

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20 Further, one of those declarants, in fact, ultimately voted to terminate Mr. Caldwell. (Miller
21 Decl. ¶ 5.) In any event, Mr. Caldwell bears the burden on the issue of pretext. *See Coleman*,
22 232 F.3d at 1281. Thus, if Mr. Caldwell wished to counter Boeing’s evidence concerning the
ECARB members’ knowledge of his race, it was up to Mr. Caldwell to develop that evidence
during discovery and submit it in response to Boeing’s motion for summary judgment. Mr.
Caldwell’s attempt to improperly shift the burden of proof to Boeing is unavailing.

1 Internet when we had down time" (Caldwell Decl. ¶ 22), his assertion does not render
2 Boeing's decision pretextual or create an issue of fact that prevents summary judgment.
3 Boeing submitted documentary evidence showing that its policies provide that personal
4 usage of the Internet for more than 20 percent of an employee's work time typically
5 results in termination. (Lewis Decl. ¶¶ 10, 20, Ex. 7.) Further, Mr. Caldwell
6 acknowledged in his deposition that his computer usage as found in the investigation fell
7 within the definition of that violation. (Caldwell Dep. at 132:7-133:6.) The fact that Mr.
8 Caldwell, or his co-workers, may not have understood, may not have been aware of, or
9 may not have been properly informed of Boeing's policy does not render Boeing's
10 decision to terminate Mr. Caldwell pretextual. Indeed, the case law is clear that Boeing
11 merely has to "honestly believe[] its reasons for its actions." *Villiarimo*, 281 F.3d at
12 1063. Boeing's decision could be wrong or ill-informed for any number of reasons, and
13 this would not mean that Boeing's decision was pretextual under Title VII. So long as
14 Boeing "honestly believed" its reasons for terminating Mr. Caldwell, its reasons for doing
15 so could, in fact, be "foolish or trivial or even baseless." *See id.* Because Mr. Caldwell
16 "present[s] no evidence that [Boeing] did not honestly believe its proffered reasons," he
17 fails to raise a genuine material factual dispute concerning pretext here. *See id.*

18 Mr. Caldwell also argues that some of his co-workers were not disciplined for
19 their personal use of the Internet. (Resp. at 19-20.) As detailed above, this argument
20 fails because: (1) the undisputed evidence is that Boeing has terminated 137 Caucasian
21 employees for the same or lesser conduct than Mr. Caldwell (Lewis Decl. ¶ 11, Ex. 4),

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1 and (2) Mr. Caldwell has not shown that Boeing had knowledge of his co-workers'
2 alleged Internet misuse. *See supra* § III.B.1.

3 Finally, Mr. Caldwell also argues that “Boeing’s witnesses testified inconsistently
4 as to the real reason for [his] termination.” (Resp. at 19-20.) First, Mr. Caldwell cites
5 Mr. Hammond’s testimony that he had heard that Mr. Caldwell was terminated for
6 watching pornography on his work computer. (*See id.* (citing Hammond Dep. at 26:15-
7 27:4).) It is undisputed, however, that Mr. Hammond, played no role in the decision to
8 terminate Mr. Caldwell (*see* Miller Decl. ¶ 3; Bogardus Decl. ¶ 15), and therefore, Mr.
9 Hammond’s understanding of the reason for Mr. Caldwell’s termination cannot raise an
10 issue of fact concerning the pretextual nature of Boeing’s decision. Second, Mr.
11 Caldwell argues that Mr. Bogardus did not believe that Mr. Caldwell should have been
12 terminated. (Resp. at 20; *see also* Bogardus Corp. Dep. at 23:12-23.) However, Boeing’s
13 ECARB works on the basis of a “majority rules” process. (Bogardus Corp. Dep. at
14 23:9-11.) Thus, Mr. Bogardus’s vote was just one among all members of the Board, and
15 individually his opinion or vote is irrelevant to Boeing’s ultimate decision. (*See id.*)
16 Moreover, even viewing the evidence in the light most favorable to Mr. Caldwell, the fact
17 that Mr. Bogardus, who knew Mr. Caldwell, voted to retain Mr. Caldwell, while other
18 ECARB members, who did not know Mr. Caldwell or his race, voted for termination,
19 demonstrates—contrary to Mr. Caldwell’s assertions—that Boeing’s process was indeed
20 not tainted by racial discrimination.

21 In sum, the court concludes that Mr. Caldwell has not demonstrated the fourth
22 element of his *prima facie* case and has not presented any specific evidence that Boeing’s

1 stated reason for terminating him was pretextual. For these reasons, the court grants
2 Boeing's motion for summary judgment on Mr. Caldwell's claim for racial
3 discrimination based on disparate treatment in his termination.

4 **C. Mr. Caldwell's Claim for a Hostile Work Environment**

5 To state a claim for hostile work environment, Mr. Caldwell must show: (1) he
6 was subjected to verbal or physical conduct because of his race, (2) the conduct was
7 unwelcome, and (3) the conduct was sufficiently severe or pervasive to alter the
8 conditions of employment and create an abusive working environment. *Manatt v. Bank*
9 *of Am.*, 339 F.3d 792, 798 (9th Cir. 2003). For the last element, the court considers "all
10 the circumstances, including the frequency of the discriminatory conduct; its severity;
11 whether it is physically threatening or humiliating, or a mere offensive utterance; and
12 whether it unreasonably interferes with an employee's work performance." *Vasquez*, 349
13 F.3d at 642 (quoting *Clark Cty. Sch. Dist. v. Breeden*, 532 U.S. 268, 270-71 (2001)). "In
14 addition, the working environment must both subjectively and objectively be perceived as
15 abusive." *Id.* "A hostile work environment claim is composed of a series of separate but
16 related acts that collectively constitute one unlawful employment practice." *Lelain v.*
17 *City & Cty. of S.F.*, 576 F. Supp. 2d 1079, 1091 (N.D. Cal. 2008) (citing *Nat'l R.R.*
18 *Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002)).

19 Title VII, however, "is not a general civility code," *EEOC v. Prospect Airport*
20 *Servs., Inc.*, 621 F.3d 991, 998 (9th Cir. 2010), and in the Ninth Circuit, there is "a high
21 burden to finding a hostile work environment," *Dawud v. Boeing Co.*, No. C17-
22 1254-JCC, 2018 WL 4735703, at *6 (W.D. Wash. Oct. 2, 2018) (citing *Manatt*, 339 F.3d

1 at 798-99). “In general, the Ninth Circuit has found that . . . ‘isolated’ incidents,
2 occurring sporadically over a long period of time, are not severe or pervasive enough to
3 alter the conditions of employment.” *Henry v. Regents of the Univ. of Cal.*, 37 F. Supp.
4 3d 1067, 1085 (N.D. Cal. 2014), *aff’d*, 644 F. App’x 787 (9th Cir. 2016) (citing and
5 quoting *Manatt*, 339 F.3d at 795-99)).

6 1. Allegations from the Frederickson Facility

7 Mr. Caldwell contends that he was subjected to a number of racially-motivated or
8 racially-tinged incidents while he worked at Boeing’s Frederickson facility and these
9 incidents support his hostile work environment claim. (*See* Caldwell Decl. ¶¶ 3-10.)
10 Yet, Mr. Caldwell’s transfer from the Frederickson facility to the CWC in Everett cuts off
11 the relevance of the Frederickson incidents to his hostile workplace claim. His transfer,
12 which altered the nature of his job, his workplace location, his coworkers, and his
13 supervisors (*see* Caldwell Dep. at 75:9-77:5), severed any notion of a continuous or
14 related hostile work environment lasting throughout his employment.

15 In *Morgan*, the Supreme Court explained that, for a hostile work environment
16 charge to be timely, “the employee need only file a charge within . . . 300 days of any act
17 that is part of the hostile work environment.” 536 U.S. at 118. The acts within and
18 outside of this period must have some “relation to” each other. *Id.* In other words, a
19 court must “determine whether the acts about which an employee complains are part of
20 the same actionable hostile work environment practice, and if so, whether any act falls
21 within the statutory time period.” *Id.* at 120. This means that unrelated or discrete acts
22 occurring outside that 300-day window—here, anything prior to October 21, 2016—are

1 time-barred and cannot support a Title VII claim. *See Porter v. Cal. Dep’t of Corr.*, 419
2 F.3d 885, 893 (9th Cir. 2005) (“If the flames of an allegedly hostile environment are to
3 rise to the level of an actionable claim, they must do so based on the fuel of timely
4 non-discrete acts.”). Indeed, “*Porter* teaches that . . . merely asserting otherwise
5 untimely discrete acts as part of a hostile work environment claim does not make them
6 timely.” *Yonemoto v. Shinseki*, 3 F. Supp. 3d 827, 845 (D. Haw. 2014). Instead, if the
7 otherwise untimely acts did not consist of the “same type of employment actions, . . . [or]
8 were [not] perpetrated by the same managers,” they cannot form part of a single unlawful
9 practice, and thus cannot be considered alongside otherwise timely allegations as a part of
10 a hostile-work-environment claim. *Porter*, 419 F.3d at 893.

11 Mr. Caldwell transferred from the Frederickson facility to the CWC in November
12 2015. (Caldwell Decl. ¶ 3.) Thus, all of the acts Mr. Caldwell cites from the
13 Frederickson facility are only actionable if they have some relation to the acts he alleges
14 from the CWC facility within the statutory period. Courts have repeatedly held that a
15 transfer to a new position or facility breaks the chain necessary to link the otherwise
16 untimely acts to those that are timely. *See, e.g., Davis v. City of Seattle*, No. C06-1659Z,
17 2008 WL 202708, at *15 (W.D. Wash. Jan. 22, 2008), *aff’d*, 343 F. App’x 230 (9th Cir.
18 2009) (“[E]ven if the Court were to assume plaintiff was subjected to harassment on
19 account of gender and/or sexual orientation during her tenure under [the alleged
20 harasser], after plaintiff transferred to the South Substation, she was never again
21 supervised by [the alleged harasser], . . . effectively sever[ing] the relationship between
22 [the alleged harasser’s] behavior and any hostile or harassing actions occurring within the

1 limitations period.”); *Fairley v. Potter*, No. C-01-1363 VRW, 2003 WL 403361, at *10
2 (N.D. Cal. Feb. 13, 2003) (finding that certain incidents are not part of the same work
3 environment where “[the plaintiff] admits that she had entirely new supervisors and
4 co-workers at the Richmond facility . . . [and] she does not assert any links between
5 either the personnel or the events at the Richmond and Oakland facilities other than the
6 fact that both are run by the postal service”); *Gonzalez v. Cty. of Yolo*, No. 2:13-CV-
7 01368-KJM-AC, 2015 WL 4419025, at *7 (E.D. Cal. July 17, 2015) (finding that the
8 plaintiff’s change in job assignments and subsequent minimization of contact with her
9 alleged harasser disrupted the continuing nature of the violation and rendered later acts
10 distinct from earlier acts); *Costanzo v. U.S. Postal Serv.*, No. 00 CIV. 5044 (NRB), 2003
11 WL 1701998, at *11 (S.D.N.Y. Mar. 31, 2003) (“[N]one of the events allegedly
12 occurring after the statutory cut-off date appear to have any relation to plaintiff’s
13 allegations concerning events before the . . . transfer. Hence, one might even assume
14 arguendo that plaintiff experienced a hostile work environment at some point before her
15 . . . transfer without it affecting the result.”); *McGullam v. Cedar Graphics, Inc.*, 609 F.3d
16 70, 78 (2d Cir. 2010) (finding an offensive comment insufficiently related to other
17 allegations in part because the plaintiff had transferred to a different department, “which
18 was a different environment in material respects—and in a different sector of the
19 building”); *Jones v. Allstate Ins. Co.*, 707 F. App’x 641, 648 (11th Cir. 2017)
20 (“Transferring [the plaintiff] to another team is a sufficiently intervening act severing the
21 initial hostile work environment from the subsequent one.”).

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1 In response, Mr. Caldwell argues that all of the acts he describes—irrespective of
2 whether they occurred at the Frederickson facility or at the CWC—should apply to his
3 hostile work environment claim because at both locations “he was working for Boeing.”
4 (Resp. at 22.) This argument, however, ignores the myriad case authority to the contrary
5 cited both in Boeing’s motion (MSJ at 21-22) and by the court above. Mr. Caldwell
6 provides no evidence linking any of the offensive acts he describes in his declaration and
7 deposition that occurred at the Frederickson facility with those he describes at the CWC
8 in Everett. (*See generally* Dkt.) Accordingly, the court concludes that the acts he
9 describes at the Frederickson facility are insufficiently related to those at the CWC to
10 form a part of his hostile work environment claim, and the court does not consider them.⁷

11 2. Portions of Mr. Caldwell’s Declaration that the Court Disregards

12 Boeing argues that the court should disregard portions of the Mr. Caldwell’s
13 declaration because it conflicts with his prior deposition testimony. (Reply (Dkt. # 61) at
14 11-12.) “The general rule in the Ninth Circuit is that a party cannot create an issue of fact
15 by an affidavit [or declaration] contradicting his prior deposition testimony.” *See*
16 *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991). The reason for this
17 “sham affidavit” rule is that, “[i]f a party who has been examined at length on deposition
18 could raise an issue of fact simply by submitting an affidavit contradicting his own prior
19 testimony, this would greatly diminish the utility of summary judgment as a procedure

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⁷ Boeing also argues that several incidents that Mr. Caldwell describes at the CWC are
22 also time-barred. (MSJ at 21-22.) Because the court concludes that Boeing is entitled to
summary judgment on other grounds, it does not consider this argument.

1 for screening out sham issues of fact.” *Id.* Nevertheless, this rule should be “applied
2 with caution,” “the inconsistency between a party’s deposition testimony and subsequent
3 affidavit must be clear and unambiguous,” and the court must “make a factual
4 determination that the contradiction was actually a ‘sham.’” *Van Asdale v. Int’l Game*
5 *Tech.*, 577 F.3d 989, 998-99 (9th Cir. 2009). Thus, “the non-moving party is not
6 precluded from elaborating upon, explaining or clarifying prior testimony elicited by
7 opposing counsel on deposition and minor inconsistencies that result from an honest
8 discrepancy, a mistake, or newly discovered evidence afford no basis for excluding an
9 opposition affidavit.” *Id.* (internal alterations omitted) (quoting *Messick v. Horizon*
10 *Indus.*, 62 F.3d 1227, 1231 (9th Cir.1995)).

11 Boeing specifically challenges four portions of Mr. Caldwell’s declaration. (Reply
12 at 12.) Two of these portions relate to events that occurred in the Frederickson facility.
13 (See *id.* (citing an incident that Mr. Caldwell describes in his declaration in which a
14 coworker at the Frederickson facility called him a racial epithet and another incident
15 involving missing car keys).) Because the court has already ruled that it will not consider
16 events from the Frederickson facility as a part of Mr. Caldwell’s hostile work
17 environment claims, the court does not consider Boeing’s challenge to these two portions
18 of Mr. Caldwell’s declaration. The other two challenged portions, however, relate to Mr.
19 Caldwell’s time at the CWC in Everett. (See *id.* (citing incidents involving the
20 Confederate flag and Boeing security guards).) Accordingly, the court considers whether
21 these portions of Mr. Caldwell’s declaration fall within the Ninth Circuit’s “sham
22 affidavit” rule.

1 First, in his deposition, Mr. Caldwell describes a single traffic stop by a Boeing
2 security guard at the Frederickson facility. (Caldwell Dep. at 194:5-195:6.) When asked
3 by counsel if he remembered “[a]ny other incidents,” Mr. Caldwell responds: “That’s all
4 that I can remember at this present moment.” (*Id.* at 195:5-6.) His deposition testimony
5 concerning the traffic stop by a single Boeing officer is also consistent with the
6 allegations in his operative complaint as well as the allegations in his charge to the
7 EEOC. (*See* TAC ¶ 15; 2/15/19 Stinson Decl. ¶ 5, Ex. 4 at 3.) Yet, in his later
8 declaration, Mr. Caldwell complains about multiple “guards unlatching their holsters and
9 placing their hands on their guns as [he] existed the vehicle.” (Caldwell Decl ¶ 16.) He
10 also embellishes his deposition testimony by declaring that, at both the Frederickson
11 facility and the CWC, “Caucasian employees, managers, and [Boeing] security guards
12 consistently asked [him] to show [his] Boeing badges, as if they could not believe that an
13 African American male should be on the premises.” (*Id.*)

14 The court finds no reason to disregard this portion of Mr. Caldwell’s declaration
15 under the sham affidavit rule. First, the incident concerning the traffic stop occurred
16 while Mr. Caldwell was working at the Frederickson facility, and the court has already
17 ruled that events at that facility do not timely relate to Mr. Caldwell’s hostile work
18 environment claim. *See supra* § III.C.1. Second, the statement in Mr. Caldwell’s
19 declaration concerning the numerous demands he received from employees, managers,
20 and security guards at both locations to present his Boeing badge is not clearly and
21 unambiguously inconsistent with prior deposition testimony. *See Van Asdale*, 577 F.3d
22 //

1 at 998-99. Therefore, the court does not disregard this portion of Mr. Caldwell's
2 declaration.

3 In his deposition, Mr. Caldwell also testified about incidents in which Boeing
4 employees either displayed a Confederate flag from a vehicle or wore Confederate flag
5 memorabilia on clothing. (Caldwell Dep. at 192:5-193:17.) With respect to both
6 incidents, Mr. Caldwell plainly testified that both occurred at the Frederickson facility.
7 (*Id.* at 192:6-7 ("[S]o I used to park my car across from the 60 building in
8 Frederickson . . .); 193:3 ("This was all in Frederickson or whatever.").) Yet, in his later
9 declaration, although he describes the event involving the flag as occurring in
10 Frederickson, he now describes the event involving the memorabilia as occurring at the
11 CWC facility in October 2016. (Caldwell Decl. ¶ 4(d).) This portion of Mr. Caldwell's
12 declaration clearly contradicts his earlier deposition testimony. Further, nowhere in his
13 declaration does he attempt to "elaborate[e] upon, explain[], or clarify[]" his prior
14 deposition testimony in relationship to the testimony in his declaration. *See Van Asdale*,
15 577 F.3d at 998-99. The court concludes that this portion of Mr. Caldwell's declaration
16 was submitted for the purpose of manufacturing a factual issue in an attempt to
17 undermine to Boeing's motion for summary judgment and is, therefore, a sham. *See*
18 II.E.2.e; *see also* Caldwell Decl. ¶ 4(d). Accordingly, the court disregards this portion of
19 Mr. Caldwell's declaration for purposes of evaluating his hostile work environment
20 claim.

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1 3. Unreported Events

2 Boeing argues that it cannot be held liable for the conduct of Mr. Caldwell's
3 coworkers if Mr. Caldwell did not report the conduct to his supervisor or management.
4 "Where harassment by a co-worker is alleged, the employer can be held liable only where
5 'its own negligence is a cause of the harassment.' Title VII liability is direct, not
6 derivative: An employer is responsible for its own actions or omissions, not for the
7 co-worker's harassing conduct." *Swenson v. Potter*, 271 F.3d 1184, 1191-92 (9th Cir.
8 2001) (quoting *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 759 (1998)); *see also Hoe*
9 *Xuan Nguyen v. ING Fin. Advisers LLC*, No. C04-1310RSM, 2006 WL 1075216, at *6
10 (W.D. Wash. Apr. 21, 2006), *aff'd sub nom. Hoe Xuan Nguyen v. N. Life Ins.*, 234 F.
11 App'x 526 (9th Cir. 2007). "In a case where a co-worker is the harasser who created the
12 hostile work environment, the plaintiff bears the additional burden of proving that 'the
13 employer knew or should have known of the harassment but did not take adequate steps
14 to address it.'" *Sines v. Bellingham Cold Storage Co., LLC*, No. C12-2227RAJ, 2014
15 WL 1319789, at *4 (W.D. Wash. Mar. 28, 2014) (quoting *Swinton v. Potomac Corp.*, 270
16 F.3d 794, 803 (9th Cir. 2001)).

17 Here, there is no evidence that Mr. Caldwell reported to a supervisor or manager
18 much of the mistreatment he describes. He does not suggest that he reported any of the
19 incidents in which Boeing security guards asked to see his badge that he subjectively
20 thought were racially motivated. (*See* Caldwell Decl. ¶¶ 12(c), 13, 16.) He does not
21 testify that he reported the teasing he experienced when wearing royal blue shoes. (*See*
22 *id.* ¶ 18.) He does not testify that he reported the complaints received about his music.

1 (See *id.* ¶ 7.) Finally, he does not suggest that he reported his belief that his supervisor's
2 requests for him to switch to the second shift were racially motivated. (See *id.* ¶ 20.)
3 Under Ninth Circuit authority, Mr. Caldwell must show that he reported these incidents
4 of purported racial harassment and that his supervisors or Boeing management responded
5 inadequately. *See Sines*, 2014 WL 1319789, at *5 ("To prevail, [the plaintiff] would
6 have to prove that at a [sic] he reported sexual harassment (as opposed to non-actionable
7 forms of harassment or other workplace complaints) to [his supervisor]. He would then
8 have to prove that [his supervisor] did not respond adequately to his reports."). Here, Mr.
9 Caldwell has done neither.⁸ Accordingly, the court cannot consider declines to consider
10 these specific events as a part of Mr. Caldwell's hostile work environment claim against
11 Boeing.

12 4. Mr. Caldwell's Remaining Work Place Harassment Complaints

13 Mr. Caldwell's remaining allegations involve two incidents with supervisors and
14 three with co-workers, which he testifies he reported to a manager. *See supra* § II.B.2(b),
15 (d), (g), (j)-(k). Those incidents involve: (1) an occurrence on December 1, 2016, in
16 which a Boeing employee began to imitate Mr. Caldwell's efforts to move large pieces of
17 metal by "walking as a knuckle-dragging ape and making ape noises," and stated, "I can't

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⁸ In his declaration, Mr. Caldwell states that he "reported many of these incidents not
19 only to my manager, who did nothing, but to Human Resources, who unfortunately also did
20 nothing." (Caldwell Decl. ¶ 15.) Such a generalized statement, however, does not prevent the
21 entry of summary judgment. Mr. Caldwell bears the burden of proof on the issue of reporting.
22 *See Sines*, 2014 WL 1319789, at *4. Further, "[c]onclusory, self-serving affidavit[s], lacking
detailed facts and any supporting evidence, are insufficient to create a genuine issue of material
fact." *Hexcel Corp. v. Ineos Polymers, Inc.*, 681 F.3d 1055, 1063 (9th Cir. 2012) (internal
quotation marks omitted) (quoting *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1171
(9th Cir. 1997)).

1 stand you blacks," while other Caucasian employees laughed (Caldwell Decl. ¶ 14); (2)
2 an incident in October 2016, and on other unspecified dates, when Mr. Hammond, the
3 team lead,⁹ told Mr. Caldwell that he was afraid of him because that is how Mr.
4 Hammond was raised (*id.* ¶ 19);¹⁰ (3) an instance in which Mr. Bogardus told Mr.
5 Caldwell that "'blacks' in the South ha[ve] a meth problem and they can't help it"¹¹ (*id.*
6 ¶ 21); (4) Mr. Caldwell's exclusion from a water cooler in early 2017 (*id.* at ¶ 11); and

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9 ⁹ "In general, an employer is vicariously liable for a hostile work environment created by
10 a supervisor." *Nichols v. Azteca Rest. Enterprises, Inc.*, 256 F.3d 864, 877 (9th Cir. 2001) (citing
11 *Faragher v. City of Boca Raton*, 524 U.S. 775, 807 (1998)). "[A]n employee is a 'supervisor' for
12 purposes of vicarious liability under Title VII if he or she is empowered by the employer to take
13 tangible employment actions against the victim." *Vance v. Ball State Univ.*, 570 U.S. 421, 424
14 (2013). "A tangible employment action constitutes a significant change in employment status,
such as hiring, firing, failing to promote, reassignment with significantly different
responsibilities, or a decision causing a significant change in benefits." *Burlington Indus.*, 524
U.S. at 761. For purposes of analyzing Boeing's motion for summary judgment, the court
assumes, but does not rule that Mr. Hammond constitutes Mr. Caldwell's supervisor for purposes
of Title VII.

15 ¹⁰ Mr. Caldwell also testifies that Mr. Hammond would follow him around closely and
16 "boss [him] around." (Caldwell Decl. ¶ 19.) However, the court agrees with Boeing that courts
17 routinely hold that this sort of disagreement with Mr. Hammond's management style cannot
18 form the basis of a hostile work environment claim. (See MSJ at 19-20 (citing *Sumera v. Lynch*,
19 No 4:13-CV-01959-KAW, 2016 WL 368159, at *7 (N.D. Cal. Feb. 1, 2016) (finding that
criticisms of work such as "'nitpicking' . . . do not give rise to a hostile work environment");
20 *White v. FedEx Corp.*, No. C04-00099 SI, 2006 WL 618591, at *9 (N.D. Cal. Mar. 13, 2006)
21 ("'[N]itpicking' does not rise to the level of creating a hostile work environment.").) This court
22 does too.

23 ¹¹ Mr. Caldwell also declares that Mr. Bogardus "often would say derogatory things
24 about African Americans," but the only specific example Mr. Caldwell provides is the one
25 referenced above to blacks in the South and "meth" use. (See Caldwell Decl. ¶ 21.) Like other
such generalized statements in his declaration, the court concludes that this one does not create
26 an issue of fact sufficient to withstand summary judgment. See *Hexcel Corp.*, 681 F.3d at 1063
27 ("Conclusory, self-serving affidavit[s], lacking detailed facts and any supporting evidence, are
28 insufficient to create a genuine issue of material fact.")

1 (5) Mr. Caldwell's various altercations with Mr. Anderson at the basketball court in
2 Boeing's gym in December 2015, February 13, 2016, and February 19, 2016 (*id.*
3 ¶¶ 12(a)-(c)). The court must determine, viewing the evidence in the light most favorable
4 to Mr. Caldwell, if these incidents occurred "because of his race" and if they were
5 "sufficiently severe or pervasive" to alter the conditions of Mr. Caldwell's employment
6 and create an abusive working environment. *See Manatt*, 339 F.3d at 798.

7 The court first considers the water cooler incident. *See supra* § II.B.2(j). Prior to
8 discovery, the court stated that it had "no trouble concluding that a reasonable African
9 American would consider the denial of access to a drinking fountain . . . to be deeply
10 humiliating and permeated with racial animus." (5/8/18 Order (Dkt. # 31) at 17.)
11 However, undisputed evidence revealed during the course of discovery demonstrates that:
12 (1) the water cooler was designated for the 787 program (a program for which Mr.
13 Caldwell did not work); and (2) numerous employees (including white employees) who
14 were not a part of the 787 program were told that they could not use the 787 water cooler.
15 (*See* Koahou Decl. ¶¶ 3, 6, 9; McNally Decl. ¶¶ 3, 6-7, 9.) Indeed, Mr. Caldwell
16 acknowledges that he has no evidence that the office administrator who denied his access
17 to the water cooler acted based on his race. (Caldwell Dep. at 239:17-240:3.) Thus, the
18 court concludes that undisputed evidence demonstrates that this incident did not involve
19 racial animus and no reasonable juror could conclude otherwise. *See, e.g., Ellis v. SUNY*
20 *Downstate Med. Ctr.*, No. 06-CV-2735, 2008 WL 11417051, at *4-*5 (E.D.N.Y. Sept. 4,
21 2008) (finding no relation to race where the African-American plaintiff was admonished
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1 not to use the water cooler at a hospital that was reserved for patients and dismissing the
2 hostile work-environment claim).

3 In addition to the water cooler incident, Mr. Caldwell's unfortunate interactions
4 with Mr. Anderson on the basketball court are also racially neutral as described by Mr.
5 Caldwell. There is no doubt that he subjectively viewed these events as "based on his
6 race." *See Manatt*, 339 F.3d at 798; *see also* Caldwell Decl. ¶ 12(b) ("I *felt* this ['no
7 dunking rule'] was racially motivated because the other players were Caucasian, and I
8 never saw one of them who could dunk.") (italics added); *id.* ¶ 12(c) ("I *felt* like this was
9 racial targeting because I recognized the security guards and I know they knew who I
10 was.") (italics added). Yet, Mr. Caldwell's subjective view of the events is not sufficient.
11 "[T]he working environment must both subjectively and objectively be perceived as
12 abusive." *Vasquez*, 349 F.3d at 642. Neither Mr. Hammond, nor any of the security
13 guards with whom Mr. Hammond interacts at the gym, ever referenced his race in any
14 way during the incidents. (*See* Caldwell Decl. ¶¶ 12(a)-(c).) Mr. Caldwell presents no
15 evidence to substantiate that his interactions with Mr. Anderson were objectively racially
16 abusive. *See, e.g.*, *EEOC v. GNLV Corp.*, No. 2:06-CV-01225-RCJ, 2014 WL 7365871,
17 at *33 (D. Nev. Dec. 18, 2014) (entering summary judgment for employer because there
18 was "no evidence other than [the plaintiff's] suspicions that the guards' actions of asking
19 for badges were motivated by race," and those suspicions fell "well short of establishing
20 a hostile work environment based on severe or pervasive conduct of a racial nature").

21 What remains are three incidents in which Mr. Caldwell was subjected to the
22 racially insensitive remarks of Mr. Bogardus and Mr. Hammond and the racially

1 offensive conduct of the ape-impersonating Boeing employee. Even if the court were to
2 include in its calculus the incidents involving Mr. Anderson and the security guards in the
3 gym, there are insufficient allegations to sustain a hostile work environment claim at trial.
4 The conduct that Mr. Caldwell alleges and that the court can consider is simply not
5 “sufficiently severe or pervasive” to alter the conditions of Mr. Caldwell’s employment
6 and “create an abusive working environment.” *See Manatt v. Bank of Am.*, 339 F.3d at
7 795-803 (affirming dismissal of hostile work environment claim where the plaintiff
8 alleged racially offensive statements, pantomimes, and gestures); *see Vasquez*, 349 F.3d
9 at 643 (holding that “no reasonable jury could have found a hostile work environment”
10 despite manifold allegations of racial discrimination, including “that the employer posted
11 a racially offensive cartoon, made racially offensive slurs, targeted Latinos when
12 enforcing rules, provided unsafe vehicles to Latinos,” etc.); *Mangaliman v. Wahington*
13 *State DOT*, No. CV11-1591 RSM, 2014 WL 1255342, at *10 (W.D. Wash. Mar. 26,
14 2014) (finding no hostile work environment and granting dismissal where the employee
15 was called “dumb Filipino,” yelled at by supervisors, “scrutiniz[ed],” and “subject[ed] to
16 extensive performance testing”). Accordingly, the court grants Boeing’s motion for
17 summary judgment on Mr. Caldwell’s hostile work environment claim.

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IV. CONCLUSION

Based on the foregoing analysis, the court GRANTS Boeing's motion for summary judgment on all of Mr. Caldwell's remaining claims (Dkt. # 47).

Dated this 10th day of April, 2019.



JAMES L. ROBART
United States District Judge